

Senate Bill No. 28

CHAPTER 1

An act to amend Section 19025 of, to add Sections 19136.1, 19136.3, and 19138 to, to repeal Section 19137 of, and to repeal Chapter 9.2 (commencing with Section 19740) of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Section 35.20 as added to the Budget Act of 2008 by Assembly Bill 88 of the 2007–2008 Regular Session, relating to taxation.

[Approved by Governor October 1, 2008. Filed with
Secretary of State October 1, 2008.]

LEGISLATIVE COUNSEL’S DIGEST

SB 28, Committee on Budget and Fiscal Review. Taxation.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

Existing corporation tax laws provide, with a specified exception, that if the amount of estimated tax exceeds the minimum franchise tax imposed on corporations, the amount payable shall be payable in installments.

This bill would modify the percentages of the estimated taxes payable pursuant to those installment payments.

The Personal Income Tax Law and the Corporation Tax Law impose a penalty on a taxpayer who underpays an estimated income tax. Those laws also specify that a penalty may not be imposed for an underpayment in specified taxable years if the underpayment was created or increased by specified changes in law.

This bill would impose a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement. This bill would specify that the penalty shall not be imposed if the understatement is attributable to specified changes in law.

This bill would also repeal certain provisions added by AB 1452 of the 2007–08 Regular Session relating to a tax amnesty program.

This bill would revise the requirement that the Department of Finance provide guidance with regard to the methodology employed in determining tax accruals and the timing of implementing any changes in tax accrual treatment.

This bill would also make changes regarding sections of the Revenue and Taxation Code added by AB 1452 of the 2007–08 Regular Session, relating

to credits against taxes imposed by the Corporation Tax Law and fees required under the Personal Income Tax Law.

The people of the State of California do enact as follows:

SECTION 1. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	30 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	30	20	20
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year.....	—	40	30	30
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year.....	—	—	50	50

After the last day of
the 8th month and
before the 1st day
of the 12th month
of the taxable
year..... — — — 100

(c) If a wholly owned subsidiary is first subject to tax under Section 23800.5 after the last day of the third month of the taxable year of owner, the amount of the next installment of estimated tax under subdivision (b) after the wholly owned subsidiary is subject to tax under Section 23800.5 shall not be less than the amount of the tax of the wholly owned subsidiary under Section 23800.5 and an amount equal to that amount shall be due and payable on the date the installment is required to be paid. For purposes of determining which installment is the next installment of estimated tax under subdivision (b), subdivision (b) shall be modified by substituting “includes the tax of a wholly owned subsidiary under Section 23800.5” for “exceeds the minimum tax specified by Section 23153.”

(d) The amendments made to this section by the act adding this subdivision shall apply to installments due for each taxable year beginning on or after January 1, 2009.

SEC. 2. Section 19136.1 is added to the Revenue and Taxation Code, to read:

19136.1. (a) Section 6654(d)(1)(A) of the Internal Revenue Code is modified to provide that in lieu of the required installments specified in that section, the amount of required installments shall instead be as follows:

(1) For the 1st and 2nd required installments, 30 percent of the required annual payment.

(2) For the 3rd and 4th required installments, 20 percent of the required annual payment.

(b) This section shall apply to installments due for each taxable year beginning on or after January 1, 2009.

SEC. 3. Section 19136.3 is added to the Revenue and Taxation Code, to read:

19136.3. (a) Section 6654(d)(1)(B) of the Internal Revenue Code is modified to additionally provide that clause (ii) shall not apply if the adjusted gross income shown on the return of the individual for the taxable year is equal to or greater than \$1 million (\$500,000 in the case of a married individual filing a separate return).

(b) This section shall apply to taxable years beginning on or after January 1, 2009.

SEC. 4. Section 19137 of the Revenue and Taxation Code, as added by Assembly Bill 1452 of the 2007–08 Regular Session, is repealed.

SEC. 5. Section 19138 is added to the Revenue and Taxation Code, to read:

19138. (a) (1) A taxpayer subject to the tax imposed under Part 11 (commencing with Section 23001) with an understatement of tax in excess

of one million dollars (\$1,000,000) for any taxable year shall be subject to the penalty imposed under this section.

(2) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the threshold amount prescribed in paragraph (1) shall apply to the aggregate amount of tax liability under Part 11 (commencing with Section 23001) for all taxpayers that are required to be or authorized to be included in a combined report.

(b) The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, “understatement of tax” means the amount by which the tax imposed by Part 11 (commencing with Section 23001) exceeds the amount of tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year. For any taxable year beginning before January 1, 2008, the amount of tax paid on or before May 31, 2009, and shown on an amended return filed on or before May 31, 2009, shall be treated as the amount of tax shown on an original return for purposes of this section.

(c) The penalty imposed by this section shall be in addition to any other penalty imposed under Part 11 (commencing with Section 23001) or this part.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) (1) No penalty shall be imposed under this section on any understatement to the extent that the understatement is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of either of the following dates:

(A) The date the taxpayer files the return for the taxable year for which the change is operative.

(B) The extended due date for the return of the taxpayer for the taxable year for which the change is operative.

(2) For purposes of this subdivision, a “change of law” means a statutory change or an interpretation of law or rule of law by regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision.

(3) The Franchise Tax Board shall implement this subdivision in a reasonable manner.

(g) No penalty shall be imposed under this section to the extent that a taxpayer’s understatement is attributable to the taxpayer’s reasonable reliance on written advice of the Franchise Tax Board, but only if the written advice was a legal ruling by the Chief Counsel, within the meaning of paragraph (1) of subdivision (a) of Section 21012.

(h) This section shall apply to each taxable year beginning on or after January 1, 2003, for which the statute of limitations on assessment has not expired.

SEC. 6. Chapter 9.2 (commencing with Section 19740) of Part 10.2 of Division 2 of the Revenue and Taxation Code, as added by Assembly Bill 1452 of the 2007–08 Regular Session, is repealed.

SEC. 7. Section 35.20, as added to the Budget Act of 2008 by Assembly Bill 88 of the 2007–08 Regular Session, is amended to read:

Sec. 35.20. If legislation is enacted amending Section 13302 of the Government Code to allow the accrual of tax payments due more than two months after the close of the fiscal year for transactions occurring in the prior fiscal year, the Department of Finance shall provide guidance pursuant to Section 13310 of the Government Code with respect to the methodology to be employed in determining accruals and the timing of implementation of any changes in tax accrual practices. Sixty percent of the change to accrual treatment of corporation income and franchise tax payments shall apply to the 2007–08 fiscal year and the balance of the accrual change to corporation income and franchise tax payments and all of the accrual change to personal income tax payments shall be applied to the 2008–09 fiscal year and subsequent fiscal years.

SEC. 8. (a) For purposes of applying Section 23663 of the Revenue and Taxation Code, as added by Assembly Bill 1452 of the 2007–08 Regular Session, any limitations on allowance of any credit against the “tax” that would apply to the assigning taxpayer in the absence of an assignment shall also apply to the same extent to the allowance of that assigned credit against the “tax” of the eligible assignee.

(b) Subdivision (d) of Section 17942 of the Revenue and Taxation Code, as added by Assembly Bill 1452 of the 2007–08 Regular Session, only applies to taxable years beginning on or after January 1, 2009.

(c) The Legislature finds and declares that this section makes clarifying changes for purposes of the proper implementation of Sections 17942 and 23663 of the Revenue and Taxation Code, as added by Assembly Bill 1452 of the 2007–2008 Regular Session.